

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMMA C., et al.,
Plaintiffs,
v.
DELAINE EASTIN, et al.
Defendants

Case No. 96-cv-04179-TEH

ORDER ON FY 2015-2016 BUDGET

Defendants Ravenswood City School District (“District”) and the California Department of Education (“CDE”) are at an impasse on the appropriate allocation of the proposed budget for FY 2015-2016, which begins on July 1. The Court must now intervene. To this end, the Court received opening and responsive briefs from both Defendants, as well as a responsive brief from Plaintiffs. Oral argument was heard on June 15, 2015. After consultation with the Court Monitor, and a full consideration of the Parties’ written and oral arguments, the Court ORDERS the FY 2015-2016 Budget as provided below.

BACKGROUND

On March 4, 2015, the Court set the schedule for the allocation process for FY 2015-2016. Budget Allocation Order (Docket No. 2026). Defendants were encouraged to agree upon an equitable allocation of the RSIP and Monitor’s budgets in light of previous guidance from the Court. As in years past, Defendants were informed that a failure to reach agreement on the budget would result in the Court’s intervention to effect “an equitable allocation.” *Id.* at 1. Pursuant to the Budget Allocation Order, the District and the Court Monitor submitted proposed budgets on April 17, 2015. (Docket Nos. 2038-39). Defendants unsuccessfully engaged in a meet and confer process, after which they informed the Court Monitor of their inability to reach an agreement. After a similarly

1 unsuccessful mediation process led by the Court Monitor, Defendants filed opening briefs
2 on their budget positions on May 22, 2015, with responses and a hearing held thereafter.
3 (Docket Nos. 2047-48, 2051, 2059-60).

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5 **DISCUSSION**

6 Defendants are in disagreement on three issues. First, Defendants disagree whether
7 the Ravenswood Self Improvement Plan (“RSIP”) budget should be allocated separately
8 from the Monitor’s budget. Second, they disagree on the appropriate allocation of the
9 RSIP and Monitor’s budgets between Defendants. Third and finally, they disagree on the
10 appropriate coverage level for backfilled services under the RSIP budget. The Court
11 addresses each of these issues in turn.

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13 **I. Disaggregation of the RSIP and Monitor’s Budgets**

14 The RSIP budget and the Monitor’s budget have historically constituted one annual
15 budget. This year, however, the District argues that the RSIP and Monitor’s budgets
16 should be disaggregated, with the costs of each budget allocated separately. The District
17 correctly points out that, in recent years, an increasing portion of the Monitor’s services
18 have focused on the statewide monitoring system - an issue for which the District bears no
19 financial responsibility under the First Amended Consent Decree (“FACD”). Nonetheless,
20 the District has paid an increasing share of the collective budget each year. To rectify this
21 fundamental unfairness, the District proposes that the cost of the Monitor’s budget be
22 allocated differently from the costs associated with RSIP implementation, with the
23 allocation of the Monitor’s costs reflecting the Monitor’s allocation of services between
24 RSIP-related and state-related assignments. CDE responds that disaggregation should not
25 be ordered because this has not been the budgetary practice in the past. The Court agrees
26 with the District and adopts its disaggregated approach to the FY 2015-16 budget.

27 In addition to the Court’s interest in the *fair and equitable* allocation of budgetary
28 expenses, disaggregation is the necessary result of this Court’s July 2, 2014 Order, which

1 provided that “CDE shall be responsible for the costs associated with the development and
2 oversight of the corrective action plan, including any consultants hired by the Monitor.”
3 *See July 2, 2014 Order at 13 (Docket No. 1958).* Consequently, the Court ORDERS that
4 the costs of the RSIP and Monitor’s budgets will be allocated separately.

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6 **II. Allocation of the RSIP Budget**

7 In the first year that the RSIP was put into effect, FY 2003-2004, the Court ordered
8 that CDE bear 75% and the District bear 25% of the costs associated with RSIP
9 implementation. In the following years, CDE’s portion of the budget decreased by 2.5% to
10 5% each year,¹ except between the 2008-2009 and 2009-2010 fiscal years, during which
11 the allocation percentages remained the same. This annual decrease in CDE’s budgetary
12 responsibility is in keeping with the principle that the cost of RSIP implementation should
13 increasingly shift to the District to ensure that improvements in the District’s provision of a
14 free and appropriate public education (“FAPE”) are financially sustainable at the close of
15 the case. Based on the historical trend, CDE argues that its allocation of the budget should
16 decrease this year to between 15% and 20%. State’s Br. at 7 (Docket. 2047).

17 Conversely, the District argues that the RSIP budget allocation should remain the
18 same as last year, with CDE bearing 22.5% of the cost and the District bearing 77.5%.
19 District’s Br. at 7 (Docket No. 2048). The District’s argument for maintaining the current
20 budget allocation is that it has made marked improvement in recent years, and that as the
21 District approaches full RSIP compliance it should not be starved of necessary funds.
22 While the Court recognizes the budgetary constraints faced by the District as outlined in
23 the District’s opening brief, it declines to jeopardize the sustainable provision of FAPE by
24 artificially propping up the District in the final months of the RSIP. Put another way, if the
25 District cannot maintain its recent level of success and achieve full compliance under its
26 current financial constraints, the Court is deeply concerned about the District’s ability to
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28 ¹ In the last decade, CDE’s allocation of the budget has been: 50%, 45%, 40%, 40%, 35%,
31.5%, 30%, 25%, and 22.5%. State’s Br. at 7.

1 provide FAPE when the Court is no longer requiring the state to provide special funding.
 2 The Court is not interested in the illusion of FAPE for the sake of a speedier resolution to
 3 this case. In accordance with established principles, the Court ORDERS that CDE bear
 4 20% of the cost and the District bear 80% of the cost of the RSIP budget.

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6 **III. Allocation of the Monitor's Budget**

7 As a preliminary matter, the Court notes that the prospective nature of budgets
 8 makes it difficult to assess the appropriate allocation of the Monitor's budget for the
 9 coming year. The District's position is that CDE should pay 75% of the Monitor's budget,
 10 based upon its expectation of the Monitor's expenditure of services toward state-specific
 11 issues. The Court agrees that the Monitor's budget should be allocated based upon an
 12 expected expenditure of the Monitor's services, but finds the District's proposed allocation
 13 untenable. In consultation with the Monitor and based upon best estimates, the Court
 14 ORDERS the allocation of the Monitor's budget as follows:

Budget Items	CDE		District	
	Allocation	Amount	Allocation	Amount
Office	50%	\$43,383.50	50%	\$43,383.50
Consultants	25%	\$27,000	75%	\$81,000
Parent Advocacy	20%	\$14,800	80%	\$59,200
Monitor's Salary	50%	\$70,000	50%	\$70,000
Budget Totals	\$408,767	37.96%	\$155,183.50	62.04%
				\$253,583.50

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22 In order to provide for the accurate allocation of the costs associated with the
 23 Monitor's budget, the Court will undertake a budget reconciliation process near the close
 24 of the 2015-2016 fiscal year. In order to implement this reconciliation, the Court has
 25 instructed the Monitor to submit to the Court monthly timesheets accounting for his work
 26 and that of his consultants. These timesheets will delineate the expenditure of services
 27 between RSIP-related and state-related matters. As part of the reconciliation process, the
 28 Court will review the Monitor's timesheets and retrospectively assess the actual allocation

1 of the Monitor's services.² Defendants will be ordered to compensate each other
2 accordingly through adjustments to the following year's budget.

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4 **IV. RSIP Budget's Coverage of Backfilled Services**

5 Finally, the Court must address the appropriate coverage rate for "missed minutes."
6 The District requests that the RSIP budget include 100% coverage for backfilling the
7 delivery of services and making up "missed minutes." This portion of the budget deals
8 with the use of independent contractors to ensure that RSIP-required services are not
9 missed. For example, when an employed Speech and Language Pathologist (SLP) is
10 called upon to attend an Individualized Education Program meeting, it might conflict with
11 scheduled SLP sessions. At these times, independently contracted SLPs are paid to step in
12 and provide previously scheduled services for students. The timely provision of services is
13 tracked by RSIP section 12.1.3. The District notes that it has achieved substantial
14 improvement in this area in recent years, in large part due to its use of these independent
15 contractors. Further, the District argues that the need for these contracted services will
16 decrease after the completion of the RSIP, as the District will not be under the same
17 pressure to so immediately make up missed minutes.

18 CDE's position is that the RSIP budget should only provide 10% coverage for
19 backfilling the delivery of services and making up "missed minutes." CDE argues that the
20 delivery of timely services is not covered at 100%, so covering "missed minutes" at 100%
21 provides a disincentive to deliver timely services. The Court rejects this moral hazard
22 argument, as the District has little incentive to risk noncompliance under the RSIP by
23 intentionally missing minutes just so that it can pay slightly less for the provision of a
24 small portion of its services. This is especially true as the District already bears 77.5% of
25 the cost of these contractors, even under 100% RSIP coverage. The associated risks and

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27 ² Defendants are not entitled to the details of these timesheets because the Monitor is an
28 agent and extension of the Court. However, during the reconciliation process, the Parties
will be informed of the overall number of hours and nature of services expended.

1 rewards therefore make CDE's argument implausible. Accordingly, the Court ORDERS
2 that missed minutes and backfilled services be covered at 100% under the RSIP budget for
3 FY 2015-2016.

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5 **CONCLUSION**

6 The Court hereby ORDERS the FY 2015-2016 Budget and budgetary allocation as
7 provided above. In consultation with the Court Monitor, Defendants shall develop and file
8 with the Court a deposit schedule modeled on last year's schedule. In light of the
9 impending commencement of the new fiscal year on July 1, the schedule must be filed on
10 or before **June 25, 2015**.

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12 **IT IS SO ORDERED.**

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14 Dated: 06/18/15

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Thelton Henderson
THELTON E. HENDERSON
United States District Judge